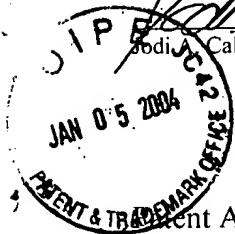


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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.



Rod A. Calderon  
Rod A. Calderon

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patent Application No.: 09/914,867

Examiner: C.P. Schwartz

Filed: March 13, 2002

Attorney Docket No. 1240.026

Inventors: Brown et al.

Confirmation No.: 4216

Title: *Brake System Having Hydraulic Accumulator and/or Combined Service Brake and Park and Hold Brake*

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**

**JAN 13 2004**

**GROUP 3600**

Sir:

In response to the Restriction Requirement dated September 5, 2003, applicant hereby provisionally elects Group I, claims 1-19 and 67 for prosecution in the above-captioned patent application.

This election is with traverse, at least with respect to Groups I-III.

Specifically, the Examiner contends that claims of all the various groups, presumably including Groups I-III, "claim different aspects of the vehicle brake system in combination/subcombination form, specifically different structure in a locking mechanism, master cylinder hydraulic accumulator combination, and caliber assembly." However, the relevant claims of Groups I-III recite various features of a locking mechanism and do *not* recite a master cylinder hydraulic accumulator combination or a caliper assembly *per se*. Restriction is improper for this

reason alone. In addition, the Examiner has fallen far short of meeting his burden for requiring restriction because inventions allegedly related as combination/subcombination.

In order to establish that the combination and subcombinations are distinct, two-way distinctness must be demonstrated. . . . See MPEP §808.02.

The inventions are distinct if it can be shown that a combination as claimed:

(A) Does not require the particulars of the subcombination as claimed for patentability (to show novelty and nonobviousness), and

(B) The subcombination can be shown to have utility by itself or in other and different relations.

When these factors cannot be shown, such inventions are not distinct. . . .

MPEP §806.05(c).

In the present case, the Examiner merely states that the claims claim different aspects of a vehicle brake system in combination/subcombination form. He fails to explain how or why the purported subcombination has separate utility either by itself or in other and different relations or how the combination as claimed does not require the particulars of any subcombination is claimed for patentability. Since both requirements must be met, the Examiner has clearly failed to demonstrate distinctness and, as such, cannot maintain the restriction requirement. Applicant respectfully requests that the restriction requirement be withdrawn with respect to Groups I-III and that claims 1-35 and 67 be examined.<sup>1</sup>


Applicant reserves the right to file a divisional application for the subject matter of the non-elected claims at a later date.

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<sup>1</sup> Claims 68-79 are directed to the operation of brake system fitted with an hydraulic accumulator and, accordingly, are more appropriately grouped with one or more of Groups IV-VII.

A check in the amount of \$950.00 is enclosed in payment of the fee associated with a request for a three-month's extension of time by a large entity, which applicant hereby makes. Should the Examiner consider any additional fees to be payable in conjunction with this or any future communication, the Director is authorized to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

Respectfully submitted,



Timothy E. Newholm  
Registration No. 34,400

Dated: January 2, 2004

BOYLE FREDRICKSON NEWHOLM  
STEIN & GRATZ S.C.  
250 Plaza, Suite 1030  
250 East Wisconsin Avenue  
Milwaukee, WI 53202  
Telephone: (414) 225-9755  
Facsimile: (414) 225-9753